

Charles Betta

November 17, 2010

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

RINKY DINK, INC., d/b/a PET)
STOP, a Washington corp.,)
on behalf of itself and all)
others similarly situated,) No. 10-2-21906-4 SEA
Plaintiffs,)
vs.)
CAPITAL ADVANCE SOLUTIONS,)
LLC,)
Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF

CHARLES BETTA

(Telephonic)

Taken at 187 Parfitt Way
Bainbridge Island, Washington

DATE TAKEN: NOVEMBER 17, 2010

REPORTED BY: MARY A. WHITNEY, CCR - WCRL #2728

Exhibit 6

SEATTLE DEPOSITION REPORTERS, LLC

www.seadep.com (206) 622-6661 * (800) 657-1110 FAX: (206) 622-6236

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APPEARANCES

FOR THE PLAINTIFFS: ROBLIN J. WILLIAMSON, ESQ.
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NO EXHIBITS MARKED/IDENTIFIED

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1 BAINBRIDGE ISLAND, WASHINGTON

2 WEDNESDAY, NOVEMBER 17, 2010

3 1:00 P.M.

4 -o0o-

5 CHARLES BETTA, witness herein, having been
6 first duly sworn on oath,
7 was examined and testified
8 as follows:
9

10 EXAMINATION

11 BY MR. WILLIAMSON:

12 Q. Mr. Betta, would you please state your full
13 name and business address.

14 A. Charles Betta. Business address is
15 2068 State Highway 35, in Holmdel, New Jersey,
16 07733.

17 Q. And Mr. Betta, you are the president of
18 Capital Advance Solutions; is that correct?

19 A. I am.

20 Q. How long have you been the president?

21 A. November 2007 is when the LLC was formed.

22 Q. And what is the business of Capital Advance
23 Solutions?

24 A. Credit card processing and accounts
25 receivable financing.

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1 Q. And the company has been in business since
2 November of 2007?

3 A. Correct.

4 Q. Does it do business in all of the 50 states
5 of the nation?

6 A. Yes.

7 Q. And Mr. Horn is the CEO of the company;
8 is that right?

9 A. Yes.

10 Q. Between you and Mr. Horn, if you know,
11 which one had more contact with VoiceBlaze?

12 A. That would be me.

13 Q. When did you first have any contact with
14 VoiceBlaze?

15 A. I don't have the exact dates, but I did
16 business with them for some time. I don't have the
17 exact dates on that.

18 Q. Okay.

19 A. I can't tell you when we started exactly,
20 the date when -- the date of when we first brought
21 VoiceBlaze on.

22 Q. Do you think it was sometime in 2008 rather
23 than 2009?

24 A. 2008 sounds about right.

25 Q. All right. How did you first learn about

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1 them?

2 A. Google.

3 Q. And when you were Googling, what were you
4 Googling for?

5 A. Predictive dialing, voice broadcasting.

6 Q. Prior to that search, had your company done
7 advertising to try to conduct its business by way of
8 other forms of telemarketing?

9 A. Absolutely.

10 Q. What kinds of things had you done before you
11 were getting in touch with VoiceBlaze?

12 A. Mail orders, SEO optimization, cold-calling.

13 Q. Okay.

14 A. Basically, public records of existing
15 accounts receivable financing that was out there
16 already, things like that, but basically mailers,
17 call centers that have inbound lead traffic that come
18 to us, our business.

19 Q. And what led you to look into the process or
20 look into using a company like VoiceBlaze? Not them
21 in particular, but the kind of service they offer.

22 A. I'm sorry?

23 Q. I don't mean VoiceBlaze in particular,
24 but looking into the kind of service that a company
25 like VoiceBlaze would offer.

1 A. Just knowing others, other people that I
2 know in different industries, who were actually using
3 it. Okay?

4 Q. Okay.

5 A. And more importantly, just actually doing
6 some research on it myself.

7 Q. All right. And when you did the Googling to
8 find companies, I assume you found others than
9 VoiceBlaze?

10 A. I did. I vetted a lot of it out and actually
11 spoke to multiple companies that do this and --
12 actually, the reason why I went to VoiceBlaze was the
13 cheapest cost.

14 Q. And did there come a time when you reached an
15 agreement, either verbally or otherwise, with
16 VoiceBlaze that they would do work for you?

17 A. Yes.

18 Q. Had you talked with someone at VoiceBlaze
19 leading up to that agreement?

20 A. I had.

21 Q. Who was it?

22 A. Nathan LeSuer.

23 Q. How do you spell LeSuer, if you know?

24 A. I don't.

25 Q. Okay.

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1 A. Le-S-u-e-r, and that's off the top of
2 my head.

3 Q. Did you speak with anyone else at VoiceBlaze
4 besides Mr. LeSuer?

5 A. Basically, it was -- he was my point of
6 contact, but more importantly, if I had to have called
7 in, it was more for, you know, technical and customer
8 support --

9 Q. Right.

10 A. -- and I wouldn't know the names of any of
11 those individuals.

12 Q. Did you at any time enter into a written
13 agreement with VoiceBlaze regarding the services
14 they were going to perform?

15 A. No written agreement. Everything was
16 basically when -- when we paid, enter into the system,
17 so to speak, you have to accept the terms and
18 conditions, and by pressing the button, I guess it's
19 more like an e-signature.

20 Q. And what were the services that VoiceBlaze
21 was going to offer?

22 A. Voice, press 1 voice dialing, basically.

23 Q. And what do you mean by "press 1 voice
24 dialing"?

25 A. It's predictive voice calling that has an

1 opt-in feature and an opt-out feature.

2 Q. What would be the "opt-in"? What do you mean
3 by that?

4 A. Opting in, to come into our office as an
5 interested party.

6 Q. Okay.

7 A. Opting out, to be put on a do-not-call list.

8 Q. I'm used to using the term of
9 "predictive dialer" as a device that makes telephone
10 calls such that within two seconds of the recipient
11 picking up, the recipient will be connected to a live
12 operator, and if that fails, then a recording is made
13 that indicates that the operator was not available.

14 Is that what you meant earlier by
15 VoiceBlaze offered "predictive dialing services"?

16 A. Can you repeat the question again, please.

17 Q. Did the calls that were made on your
18 behalf by VoiceBlaze involve playing a recording that
19 the recipient would hear?

20 A. Yes.

21 Q. All right. And was there an understanding
22 that if the number dialed, phone number dialed, went
23 into voice mail, a recording would or would not be
24 left? If you know.

25 A. Well, I can explain that to you very --

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1 in-depth --

2 Q. Please.

3 A. -- if you'd like me to.

4 Q. Please.

5 A. The system is smart enough to know what's
6 a voice mail and what's not, so it's kind of
7 open-ended on what you say into it, so it's very --
8 yes, you can program it to do that or no, you don't
9 have to.

10 Q. Okay. In your case --

11 A. Yes.

12 Q. -- what was the decision, to leave
13 messages --

14 A. No message left on an answering machine.

15 Q. Okay.

16 MR. PEABODY: This is Max. Let me just
17 interject one thing. Probably for the court reporter,
18 we need to make sure that Rob gets his question out
19 fully, and then you maybe pause for a second and then
20 give an answer.

21 THE WITNESS: Okay.

22 Q. I presume there was a script that was used
23 to make the recording, leave the recording, make the
24 announcement as it were; is that right?

25 A. Correct.

1 Q. And who would devise that script?

2 A. Is the question who would record the script
3 or who would actually write the script?

4 Q. Who wrote it.

5 A. Who wrote the script?

6 Q. Yes.

7 A. We did.

8 Q. And did the script change over time?

9 A. Did it change over time in what way?
10 I don't --.

11 Q. Did you change the language?

12 A. The language?

13 Q. Yes.

14 A. There are multiple scripts.

15 Q. Would you use one script for a while and
16 then switch to another, or were there campaigns
17 where you would be using two or more at the same
18 time?

19 A. We would never run two or more at the same
20 time, I would say. Since we do have two different
21 businesses that kind of run here -- one is credit card
22 processing and one is the accounts receivable
23 financing -- that's when we would run two different
24 scripts.

25 Q. Who would do the actual recording of the

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1 scripts?

2 A. Actually, somebody that was referred from
3 VoiceBlaze, and to be totally honest with you, I don't
4 know the name.

5 Q. Okay.

6 A. But it was a professional voice talent, so to
7 speak.

8 Q. The goal, I presume, was to have,
9 through VoiceBlaze, telephone calls using this script
10 made to potential clients, correct?

11 A. Correct.

12 Q. And how were the telephone numbers that were
13 dialed produced?

14 A. The data was uploaded by VoiceBlaze.

15 Q. And was VoiceBlaze given directions by you
16 or someone at the company as to what kind of numbers
17 you wanted?

18 A. As far as a specific SIC code? Yes.

19 Q. Okay. What was the phrase you used,
20 "SIC code"?

21 A. Correct.

22 Q. What does that mean?

23 A. It's a number that categorizes a specific
24 business or industry.

25 Q. All right. Would you give directions to

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1 VoiceBlaze, saying: Please come up with some phone
2 numbers that have these SIC codes?

3 A. Yes.

4 Q. Is that how it would work?

5 A. Yes.

6 Q. Would that be done verbally, by calling
7 somebody and telling them you wanted it done,
8 or how would it work?

9 A. It could have been all of the above.
10 It could have been an email, it could have been a
11 call.

12 Q. And did you have these calls made by
13 VoiceBlaze in the context of sort of a campaign,
14 where you would do a particular campaign to a
15 particular group and then you would do a different
16 campaign? Did it work that way?

17 A. I don't know. There is an interface.

18 Q. Right.

19 A. I think we really need to actually go with
20 the business to understand the actual interface before
21 we can just say: VoiceBlaze, VoiceBlaze, did I make
22 VoiceBlaze.

23 Yes, VoiceBlaze put the data up,
24 but, more importantly, the system in the interface
25 has all the bells and whistles for me to program,

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1 myself.

2 Q. I've got it.

3 So you would have VoiceBlaze provide you
4 with data, and you indicated that it would then be
5 uploaded. Who would do the uploading?

6 A. VoiceBlaze would.

7 Q. And would it be uploaded to your account on
8 their site?

9 A. On the interface, correct.

10 Q. And you could go to that, I guess, interface
11 and then determine or direct when the calls were to be
12 made?

13 A. Uh-huh -- yes, and who would I like to
14 be called and who would not like to be called, for
15 that matter.

16 Q. Who would not like to be called.

17 A. Who would not like to be called, correct.

18 Q. All right. So you could go on -- I'll call
19 it the "interface," I guess it was, a site -- a site
20 on their website where you could, in effect, deal
21 with your account and have calls made? Am
22 I describing that right at all?

23 A. I can't say yes or no to that because I don't
24 know if it was their website. I have a portal -- a
25 URL address that would take me to a user name and

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1 password, and for me to answer that, it was going to
2 their website.

3 Q. All right.

4 A. I don't know -- I don't know where it was
5 going.

6 Q. But you would enter in a user name and a
7 password --

8 A. And a password that was given to me by
9 VoiceBlaze, correct.

10 Q. Would you then get to some screen where you
11 could make entries in some way to direct the calls to
12 get sent out?

13 A. Yes.

14 Q. So what were the different choices you had?
15 I mean, did you have a choice of like when the calls
16 would be made, what time of day? What was going on
17 when you would actually initiate the calls?

18 A. What time of day -- okay? -- where I was
19 calling. How many -- how fast I wanted the actual
20 system to run, how slow I actually wanted it to run.

21 Q. Okay.

22 A. And then a bunch of other things. Basically
23 what, you know, states I wanted to block and what
24 states I didn't want to block.

25 Q. Okay.

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1 A. What -- where I wanted to -- how I wanted to
2 scrub against do-not-call lists, you know, nationally,
3 or basically an internal do-not-call list. If anybody
4 happens to opt out of one of our campaigns, obviously
5 we don't want to call them again.

6 Q. Right.

7 A. So we would scrub against that, as well.

8 Q. And when you first did this, do you recall
9 how many phone numbers had been provided and
10 uploaded to the interface by VoiceBlaze?

11 A. I don't.

12 Q. Do you even recall if it was 50,000 versus
13 500? I mean, any ballpark?

14 A. It would -- it was probably in the hundreds
15 of thousands.

16 Q. And I assume --

17 A. Don't hold me to that, because I don't have a
18 specific -- can't pinpoint that.

19 Q. The data, though, was on this place where you
20 would go, as it were, after you put in your user name
21 and password? Is that where you could then literally
22 sort of look at the data if you wanted to?

23 A. You cannot look at the data. It only shows
24 up in canisters. It's a tranche of 20,000, 30,000, so
25 to speak, and it's segregated by time zone.

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1 Q. Okay.

2 A. But can you see individual records? No.

3 Q. So you would use the software, I suppose,
4 to make calls, and if you said you wanted them only to
5 go to, say, New Mexico and Arizona, did the system
6 have the capacity to search the data, then, for those
7 numbers?

8 A. Well, I pretty much just told them that it
9 segregated it per time zone, but if I wanted it to do
10 that, I could.

11 Q. Okay.

12 A. If you are saying within an Eastern time
13 zone, if I just wanted to just target New York, can
14 I block every other state in the country.

15 Q. Or the time zone, right?

16 A. Or the time zone, If I'm targeting New York,
17 and I'll get into specifics about that in a second.
18 So if I wanted to target just New York, yes, I can
19 block every other state in the country so as just to
20 target New York.

21 Q. Okay. And --

22 A. And I'll explain if you want me to go
23 in-depth about it --

24 Q. Yes.

25 A. -- if I can.

1 Q. Sure.

2 A. Okay.

3 Q. If you could, just explain how each time
4 you went in, you would direct that particular effort,
5 as it were.

6 A. Okay. So basically we're -- Geoff and I are
7 -- aware of ADAD calls -- okay? -- and we have a call
8 list, basically, which tells us what states we are
9 allowed to dial into and what states that we're not
10 allowed to dial into, and we abide by it.

11 When I say we "abide by it," basically
12 that there's no hindering of a campaign or a schedule
13 if somebody else, you know, got my password or user
14 name and password -- okay? -- so these states -- which
15 are, you know, civil or criminal -- okay? -- and even
16 if it was gray in the least bit -- are blocked from
17 calling.

18 The way the system blocks it is, is
19 it blocks every area code in that state, and it's
20 smart enough to update itself if there's new area
21 codes that do come in. Okay?

22 More importantly, we're scrubbing against
23 do-not-call lists and scrubbing against our internal
24 do-not-call list, so it's pretty hard to get a rogue
25 call to go into one of these states that we're

1 blocking.

2 Q. I want to come back to that. What I was
3 wanting to try to determine is, if you had decided you
4 wanted some calls to get made, my understanding is
5 you would log in with your user name and password,
6 and then you would make some decisions about
7 how many calls to be made, where, et cetera; is that
8 right?

9 A. Correct.

10 Q. And each time you did that, were you to
11 prepay something or other before you could actually
12 send out the --

13 A. Yes.

14 Q. And how would you know how much to pay so you
15 could then use the system?

16 A. It was on a per-minute basis, which was
17 billed in six-second increments.

18 Q. Right.

19 A. There was cost to it, and that would be
20 correlated, directly correlated, to the amount of
21 money that I would send.

22 Q. So, before you would sign on, then, to have
23 the calls made, you would have made a payment; is that
24 correct?

25 A. Yes.

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1 Q. And would you know from the amount of that
2 payment how many calls you could then initiate?

3 A. Again, that's an open-ended question.
4 I don't know how long somebody could stay on the phone
5 or how long somebody could -- how many people would
6 hang up, so, no.

7 Q. Okay.

8 A. I'd have to say no to that.

9 Q. Was there ever a time when you would make a
10 prepayment and initiate some calls, and then at some
11 point the calling would stop because you had used up
12 your minutes, used up your time, as it were?

13 A. Are you asking me did that happen or could
14 that happen?

15 Q. Did that happen.

16 A. It could happen, correct.

17 Q. No, did it happen.

18 A. Oh, I'm sorry.

19 Q. That's all right.

20 A. I misunderstood what you said. Did it happen
21 with me?

22 Q. Yes.

23 A. Not that I recall. I mean, it could have.
24 We could have, you know, run out of minutes, so to
25 speak, and then replenished.

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1 Q. All right. What about if you --

2 A. But I don't recall, you know, a for-instance.

3 Q. If you did not run out of minutes, would you,
4 in effect, have a credit?

5 A. A credit?

6 Q. For the next time you called in.

7 A. Yes, yes.

8 Q. And when you were charged 3.5 cents
9 per minute, would that be from the beginning of the
10 call being made or to when it was first picked up?
11 How did the timing work?

12 MR. PEABODY: Object to the form of the
13 question.

14 Q. You get to answer. I'm not quite sure why
15 the objection was made.

16 MR. PEABODY: I'm not sure where the 3.5
17 -- I don't recall that being mentioned, so the
18 objection is assumes facts not in evidence, unless I
19 missed something.

20 MR. WILLIAMSON: It's in the interrogatory
21 answers, and I thought he said it.

22 Q. How much were you charged by VoiceBlaze?

23 A. How much -- the actual amount -- hold on a
24 second. On the minute side you're saying, correct?

25 Q. Right.

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1 A. Okay. It's .014 cents per minute.

2 Q. .014 cents per minute.

3 A. Correct.

4 Q. And the dialer or whatever it is that was
5 being used, would it dial one call at a time and just
6 keep doing it until they were all done?

7 A. Yes.

8 Q. So would you be charged from when the
9 dialer first started to call the number in question
10 through when it would --

11 A. Six-second increments.

12 Q. Right.

13 A. Six-second increments.

14 Q. But did those six seconds or longer start
15 with the call being placed?

16 A. I wouldn't have the answer to that, no.

17 Q. All right. And the call had a feature where
18 someone could press 1 to talk with someone; is that
19 right?

20 A. No. That's also optional.

21 Q. Oh, okay. In your case, what did the script
22 say, if anything, about calling to get more
23 information or what have you? Did it indicate to
24 press 1 or did it just give a number to call?

25 A. You're asking about the script, the script

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1 itself, correct?

2 Q. Yes.

3 A. Okay. There were some scripts that had 1 and
4 2, there were some that could have, you know, 7 and 2,
5 and some scripts that could have 2 and 3.

6 Q. Did all of your scripts have prompts that
7 people could press to get further information or ask
8 to opt out?

9 A. Yes.

10 Q. If somebody pressed a prompt so they could
11 get more information, would they then be connected
12 with a live operator?

13 A. They would.

14 Q. And during the time they're talking with
15 a live operator, would that count towards the charges
16 made by VoiceBlaze?

17 A. I believe so.

18 Q. If a call were placed, the phone rang for
19 20 seconds, whatever, and there was no pickup, so a
20 disconnect, were you charged for that?

21 A. I'm not so sure on that.

22 Q. Between you and Mr. Horn, did one of you go
23 onto the interface and initiate calls more often than
24 the other?

25 A. That would be me.

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1 Q. Okay. And did you eventually stop using
2 VoiceBlaze?

3 A. Yes.

4 Q. When was that?

5 A. I don't have the dates specifically in front
6 of me, so as I'm sitting here, I don't know.

7 Q. Why did you stop?

8 A. Cost.

9 Q. If you prepaid something, went onto the
10 interface, and then had a number of calls made,
11 would you ever get a report or know how many, in fact,
12 got made?

13 A. How many calls were made?

14 Q. Yes.

15 A. Yes.

16 Q. Would that report indicate how many calls
17 produced someone who answered versus how many were not
18 answered or went to voice mail? What would be in the
19 reports?

20 A. Statistics on how many calls were made,
21 how many calls where answering machines were -- I want
22 to say "hit," because it's specific to if you were
23 leaving a message, but how many answering machines the
24 system picked up on, how many problems there were in
25 the system, how many live persons.

1 Q. Would the reports tell you how many people
2 who picked up and then prompted, hit one of the
3 prompts, as opposed to hung up? Would it have all of
4 that kind of information?

5 A. Well, you could see who opted in and opted
6 out, how many people opted in and opted out of the
7 campaign.

8 Q. And were these reports available at the
9 interface? Were they sent to you? What form would
10 they come?

11 A. At the interface.

12 Q. And were those reports available to you
13 throughout the time that you were using VoiceBlaze so
14 that if you wanted to go back and look at one from an
15 earlier time, they were available?

16 A. You're asking me if I could go back to an
17 earlier date to get that information, from earlier
18 campaigns?

19 Q. Yes.

20 A. Yes.

21 Q. And when you terminated your account
22 with VoiceBlaze, was there something formal that you
23 did so that you now could not use your user name and
24 password and go on line and -- or go into the
25 interface again?

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1 A. Yes.

2 Q. What did you do to terminate --

3 A. Stop sending them money.

4 Q. So if you --

5 A. I don't mean to be funny about that, but,
6 yes, that's all it took.

7 Q. So if you sent in money today, would you be
8 able to get into the interface again?

9 A. I don't know.

10 Q. Okay.

11 A. Good question.

12 Q. And if you were to be able to get into the
13 interface, then you could get all the reports; is that
14 correct?

15 A. I don't have the answer to that question.

16 Q. Is there any reason for you to think you
17 couldn't?

18 A. Is there any reason that I think that
19 VoiceBlaze couldn't --

20 Q. No.

21 A. -- or is there any reason why I think
22 I couldn't?

23 Q. Any reason why you could not do it if you
24 just sent in some money now.

25 A. Yeah, because it would be specific to a start

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1 and finish date for that specific campaign.

2 Q. Okay.

3 A. Specific, I guess, "account" that was
4 created. I don't want to say "campaign." Maybe
5 I said that wrong.

6 Q. That's all right.

7 I'm trying to understand. As far as
8 VoiceBlaze knows, they don't know either way if you've
9 stopped using them, as it were, other than you haven't
10 sent any money in. Is that correct?

11 A. That's correct.

12 Q. So you didn't call anybody --

13 A. Well, I have sent some emails and I've gotten
14 no response.

15 Q. And you've gotten no response?

16 A. No.

17 Q. What were the emails about?

18 A. Just wanting to get back into the system
19 to -- you know, just to vet this out a little bit more
20 and to basically give my attorney access to it.

21 Q. And those emails have gone -- there has been
22 no response?

23 A. No.

24 Q. While you were still using VoiceBlaze,
25 did you ever have occasion to send emails to anybody?

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1 A. Sure.

2 Q. And they would respond, I gather.

3 A. They would.

4 Q. And so do you have any idea why now they
5 don't respond to your emails?

6 A. I don't.

7 Q. Have you called Nathan to ask him about what
8 is going on?

9 A. I've called once or twice and no response.

10 Q. Did he know that a lawsuit had been filed?

11 A. I don't know that.

12 Q. Did you leave him a voice mail?

13 A. Basically to call me back. That was the long
14 and the short of it.

15 Q. But not, We've been sued, call me back,
16 I want to talk to you about it?

17 A. Absolutely not.

18 Q. I'm just trying to understand why somebody
19 who apparently would call you back stopped and
20 whether there was any explanation for it, or a
21 company that used to respond to your emails would
22 suddenly stop, and I assume you have no explanation
23 for that.

24 A. I don't.

25 Q. Have you tried to put in \$100 and see if you

1 could then use your user name and password and get
2 into the interface?

3 A. No, because every time that I would actually
4 add money, it would be through a Google "invervation,"
5 so to speak -- that was sort of like a PayPal?

6 Q. Right.

7 A. -- and it was kind of linked to my bank
8 account, and that's the only way I would add funds.

9 Q. Right.

10 A. I wouldn't know just to send a check to, you
11 know, VoiceBlaze and just cross my fingers and hope
12 that they would add funds into it. It was something
13 that -- you know, would send me a link, I would go
14 onto it, put my information in, and I would say how
15 much money I wanted to, you know, PayPal or Google --
16 whatever system it was -- to them, and that's the way
17 I would add funds.

18 Q. What would initiate them sending you a link?

19 A. An email.

20 Q. From you, right?

21 A. I would initiate -- correct.

22 Q. In other words, would you --

23 A. I would initiate it, I would respond to it or
24 go to the link, and from there I would add funds.

25 Q. But would the process begin by you sending an

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1 email that says: I want to put some money in because
2 I want to do another set of calls?

3 A. Yes.

4 Q. Okay.

5 A. Send me a link for X amount of dollars.

6 Q. And have you tried to do that since this
7 lawsuit was filed?

8 A. Well, I'm not going to say I've tried to do
9 that, so to speak, but I've tried to correspond with
10 VoiceBlaze via email and I've gotten no response.

11 Q. Okay.

12 A. Have I dangled putting, you know, money in
13 front of it? No.

14 Q. Were the reports they would give you that
15 were on the interface about results of a particular
16 call effort printable?

17 A. Can you repeat that question again.

18 Q. Could you print the reports you talked about
19 earlier? Could you have printed them out?

20 A. Could I have?

21 Q. Yes.

22 A. Yes. I think, yes, I could have printed them
23 out.

24 Q. Did you ever?

25 A. No.

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1 Q. Did the reports ever say to whom the calls
2 went, the specific numbers?

3 A. The reports would actually -- there's
4 two different types of reports that are in there.
5 The one that that we were speaking about before would
6 not have phone numbers in there. You couldn't see who
7 was dialing out on them.

8 Q. Right.

9 A. And then there was other reports that
10 basically would come in that -- where you could see
11 numbers that were actually coming in on a caller ID,
12 if the number was not blocked on the other end.

13 Q. So you could see numbers of persons that
14 were calling to you?

15 A. Only inbound.

16 Q. Right.

17 A. Not outbound.

18 Q. Okay. Do you know where VoiceBlaze
19 physically was located, where it had its offices or
20 headquarters?

21 A. I think it was Pennsylvania, but then
22 again I could be wrong. I don't know. I don't know
23 to be -- I never physically mailed anything to
24 VoiceBlaze.

25 Q. And you talked about blocking calls to

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1 certain states because of concerns about civil or
2 criminal laws that forbid them. Do you recall that?

3 A. I do.

4 Q. I don't know if I -- you said something
5 about, We knew about "AD" calls. Is that --

6 A. "ADAD" calls.

7 Q. Oh, okay. ADADs. I'm sorry.

8 A. Correct.

9 Q. All right. Which is what you were doing?

10 A. I'm sorry?

11 Q. You were using VoiceBlaze to make ADAD calls,
12 correct?

13 A. Yes.

14 Q. And you became aware of certain states
15 where the calls should not be made; is that correct?

16 A. Correct.

17 Q. How did you become aware of it?

18 A. We're a credit card processing company,
19 and these lists are provided -- actually, this list is
20 provided to us, and basically we need to abide by it,
21 you know, the provisions with VISA and MasterCard.

22 Q. Okay. So who --

23 A. Basically, it's on our backbone's website,
24 and we point to it, and we've taken it, actually
25 embedded it into our dialing systems, and it's

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1 permanent.

2 Q. Okay.

3 A. And it was at the time of VoiceBlaze,
4 as well.

5 Q. You're saying that there was a list provided
6 by somebody or other that had the list of these states
7 in it?

8 A. Yes.

9 Q. Who provided the list?

10 A. I'm sorry?

11 Q. Who provided the list.

12 A. Our backbone provider for credit card
13 processing, which is North American Bancard.

14 Q. North American Bancard.

15 A. Correct.

16 Q. What does "backbone" mean in this context?

17 A. They are the ISO, independent sales
18 organization, that houses and -- it's actually where
19 the credit card transactions are run through for
20 authorizations. So it's not VISA and MasterCard,
21 it's basically an ISO.

22 Q. All right.

23 A. North American Bancard is that ISO, and we're
24 a layer down from them.

25 Q. And when you say they provided a list, was it

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1 literally sending you something in the mail, was it
2 something you could print off --

3 A. Something you could print off --

4 Q. -- or was it on their website --

5 A. Something you could print off their website.

6 Q. And could one go onto that website today and
7 see what the list is?

8 A. You would have to be an agent.

9 Q. Pardon me?

10 A. We would have to be an agent of.

11 Q. Okay. And --

12 A. It doesn't make any sense for anybody to go
13 to a website -- I'm just explaining -- who is not an
14 agent, so --.

15 Q. So at some point, maybe even before you were
16 using VoiceBlaze, you were aware that there was this
17 list on the site?

18 A. Absolutely.

19 Q. And do you have a copy of that list in your
20 offices?

21 A. We do.

22 Q. Do you have a copy of it as it existed at the
23 time you began to use VoiceBlaze?

24 A. It didn't -- it never changed.

25 MR. WILLIAMSON: I want to get a copy.

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1 I would like to see it, and I'm wondering how --

2 MR. PEABODY: Charles, can you provide
3 that.

4 A. I can get you a copy.

5 Q. All right.

6 And do you recall that that list indicated
7 that ADADs were not to be made to Washington?

8 A. Absolutely. When you see the list,
9 you'll know. It has restrictions, it has civil or
10 criminal violations, within what states they are and
11 aren't.

12 Q. No, I'm interested because I've seen lists
13 from other outfits in this business that were produced
14 where Washington was not on the list, and so obviously
15 people interpret the laws differently and that's fine.

16 You read this to mean calls shouldn't be
17 made to Washington, correct?

18 A. Correct.

19 Q. How did you then make sure that such calls
20 didn't get made, that such calls were not made?

21 A. Say that again. Can you repeat that question
22 for me.

23 Q. How would you make sure, when you were
24 using VoiceBlaze, that calls would not be made to
25 Washington?

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1 A. Correct.

2 Q. How would you --

3 A. I blocked Washington State from ever
4 being called. No matter if it was a -- Pacific Coast
5 data that was being entered by VoiceBlaze, it couldn't
6 trump me putting that state on that -- a do-not-call
7 state into the system. So it would automatically
8 block out every area code in the state of Washington.

9 Q. Was this is something you did when you
10 were first setting up the interface with VoiceBlaze?

11 A. Yeah -- yes.

12 Q. So you did it that first time, and then just
13 assumed, as I think you certainly would have been
14 entitled to, that that would remain in effect the
15 whole time you would use VoiceBlaze?

16 A. It's embedded.

17 Q. I'm not sure what you --

18 A. You can't remove it.

19 Q. Pardon me?

20 A. You can't remove it. You set rules, and the
21 rule is that if Washington State is a state that don't
22 I want to be called, it will not be called.
23 It's "embedded." It's a rule that I create in the
24 interface.

25 Q. Are you able to produce reports or data today

1 that would tell you the area codes of all persons,
2 throughout the time you made campaigns, who pressed
3 the prompt to be connected to your company to get more
4 information?

5 A. From VoiceBlaze you say?

6 Q. No, from yourself. Do you have that
7 information?

8 A. As far as inbound traffic is concerned?

9 Q. Yes.

10 A. I'm not too sure that I can do that myself,
11 but I don't -- I don't know if I can answer that
12 question. I don't know if I can provide data for
13 since I opened my doors until now for everybody that
14 called in to our operation. I'm sure that if I called
15 my phone company I could.

16 Q. I'm trying to determine if you would have
17 any way of determining, based upon using VoiceBlaze
18 only, the phone numbers of persons who, receiving that
19 ADAD, would have pressed the prompt to permit them to
20 talk with somebody at your company.

21 A. I don't have that information.

22 Q. Is it available or you just don't have it?

23 A. I don't have the information because --
24 I think we just went over this -- basically I can't
25 get in to query or look back into a system that I

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1 don't have access to.

2 Q. Right. I'm just --

3 A. But could it be?

4 Q. No, I'm trying to determine whether, just at
5 your offices where you're located, you have any way of
6 knowing, from your own information, persons that
7 called you as a result of the VoiceBlaze broadcast and
8 their having pressed 1 to talk to somebody.

9 A. No.

10 Q. All right.

11 A. I can't say what came in off of that and what
12 didn't.

13 Q. What about persons who asked to be on the
14 internal, as it were, do-not-call list?

15 A. (No audible response.)

16 Q. Let's start over. Do you have an internal
17 do-not-call list?

18 A. We do.

19 Q. And whether somebody is on that as a result
20 of having pressed the prompt with respect to a call
21 made through VoiceBlaze or in some other way I presume
22 is not broken down? Is that correct?

23 A. In my systems?

24 Q. Yes.

25 A. No.

1 Q. So, if I said to please produce your
2 do-not-call list, it would have numbers on it, but how
3 those numbers got on the list couldn't be determined;
4 is that right?

5 A. Well, you could -- by opting into 2, it puts
6 you on an internal do-not-call list. Okay?

7 Q. Right.

8 A. Whether -- you're saying to me can I put
9 someone else's name on a -- can I do that myself --

10 Q. No. Let me --

11 A. -- if somebody said to me and -- opted into a
12 yes response?

13 Q. Let me try a different --

14 A. And ask -- I'm sorry, go ahead.

15 Q. Let me ask it differently, because I'm
16 confusing you.

17 Let's assume that unbeknownst to you
18 the VoiceBlaze equipment, technology, what have you,
19 was not honoring your request about Washington --

20 A. Okay.

21 Q. -- and it turns out calls were getting made,
22 and at least one apparently was made, unless my client
23 is not telling the truth. Okay. Are you with me so
24 far?

25 A. I am.

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1 Q. All right. And so I say to myself, Well, let
2 me get the do-not-call list, because if I get it and I
3 see a bunch of Washington persons on it, I can say to
4 myself, Gee, some calls did get through to Washington,
5 because at least these people in Washington asked to
6 be put on the do-not-call list.

7 A. Right.

8 Q. So let me try again.

9 Would the do-not-call list tell me who had
10 been called through VoiceBlaze and who had pressed the
11 prompt so they would not be called again?

12 A. I wouldn't know how to query that --

13 Q. No --

14 A. -- so I wouldn't have that answer to that.

15 Q. Okay.

16 A. I wouldn't -- if somebody opted out and is on
17 a do-not-call list?

18 Q. Right.

19 A. I don't have that data for me to say that
20 I can scrub it. The system has it. So I wouldn't
21 know how to extract it. Okay?

22 Q. Well, you have a do-not-call list, don't you?
23 You have an internal --

24 A. I'm sorry?

25 Q. You have an internal do-not-call list right

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1 now, don't you?

2 A. Yes.

3 Q. And you could print it out and we could look
4 at it, right?

5 A. No. The system has the do-not-call list,
6 the internal do-not-call list. I don't.

7 Q. What system?

8 A. The interface which we spoke about,
9 from VoiceBlaze.

10 Q. All right. So you've never had one as a
11 result of other telemarketing or what have you
12 activities in which you've engaged that created
13 persons asking to opt out?

14 A. As far as our business is concerned?

15 Q. Right.

16 A. No.

17 Q. Okay.

18 A. No.

19 Q. Okay.

20 A. The internal do-not-call list is specific to
21 the interface.

22 Q. All right. Did you ever observe one way
23 or -- well, okay.

24 I assume and hope that some of the --
25 well, not hope. I assume that some of the calls

1 produced leads, did they not?

2 A. Some of -- yes.

3 Q. And perhaps even -- well, let's start over.

4 Do you have a list -- internally, not on
5 the interface -- of leads that arose as a result
6 of the VoiceBlaze telephone calls?

7 A. Of my -- do I have a client list? Do we keep
8 track of how they came in? Like we said earlier in
9 the conversation, we have multiple lead sources that
10 come in to our establishment, multiple. Okay?

11 We have -- whether it could be from
12 cold-calling or, basically, mailers or, you know, a
13 call center, which is cold-calling, and live
14 transferring, you know, of a person of interest into
15 our operation. I mean, there's just vast ways that we
16 get our business.

17 Q. Okay.

18 A. There are outside agents that provide
19 business to us from other states, for national
20 companies.

21 Q. If I said to you or Max, Please provide me
22 with the phone numbers of every single client that has
23 a Washington area code as their phone number, and
24 I got a list of five or 500 -- I don't care -- neither
25 you nor I could look at that and determine whether

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1 they had come as a result of the VoiceBlaze calling or
2 some other way; is that correct?

3 A. Yes.

4 Q. And I assume that during the time you were
5 using VoiceBlaze, you were continuing with the other
6 marketing efforts you've described.

7 A. All of them.

8 Q. The written discovery that we served on you,
9 as a result of it we got certain documents, one of
10 which were these Google checkout forms making the
11 payments in question. Do you recall providing those
12 to your lawyer to give to us?

13 A. Yes.

14 Q. So if there was a request for a \$500
15 payment, and then later another payment and so on, do
16 those amounts have any correlation to the number of
17 calls that got made?

18 A. Well, just times it by .014 and you'll get
19 your number.

20 Q. Or --

21 A. Did you say duration?

22 Q. No. I'm just trying to determine
23 how many -- if you put in \$500 and most if not all of
24 that got used up, would you then know how many calls
25 got made?

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1 A. I think I answered this question earlier in
2 the deposition.

3 Q. Well, just bear with me, because I don't
4 understand your world. My understanding is --

5 A. I get it. I know -- I know that. I'm not
6 trying to be evasive, either, I'm just -- I'm saying
7 -- it's very simple. All right?

8 If I gave \$1,000 --

9 Q. Right?

10 A. -- then \$1,000 times .014 equals how much?

11 Q. Well, I'm not sure we multiply it or we
12 divide it.

13 A. I'm telling you.

14 Q. Yes. Okay. For each minute you paid .014;
15 is that right?

16 A. Right. So if I -- if I was to purchase
17 100,000 minutes -- I'll do it a different way.

18 Q. All right.

19 A. If I was to purchase 100,000 at .014 --
20 correct?

21 Q. Right. Okay.

22 A. -- how much would that cost me?

23 Q. And when you say it's ".014," does that mean
24 14,000ths of a cent per minute or 1.4 cents per
25 minutes?

1 A. No, it's 100,000ths of a cent, correct.
2 It's less than a -- I'm sorry. You said -- it's
3 100,000 times .014, which would be correlated to a
4 penny and a half -- correct?

5 Q. Okay. So --

6 A. -- or less than a penny and a half, which
7 would equal \$1400.

8 Q. Let's say it was penny and a half, just for
9 round numbers, per minute. All right?

10 A. Uh-huh.

11 Q. So if you paid \$500 for something, would you
12 divide that by a penny and a half to get the total
13 number of minutes that that \$500 would have produced?

14 A. Yes.

15 Q. And how long that would --

16 A. And how many minutes, how many -- how long
17 that would last, the question you asked, is kind of
18 open-ended. I don't know.

19 Q. Okay. And how long would --

20 A. You couldn't know. It would be like
21 predicting the lotto.

22 Q. How long were the scripts, 20 seconds, 30? I
23 know they varied, but roughly how long were the --

24 A. Some of them could have, yes.

25 Q. So 20 to 30 seconds, generally?

1 A. Well, 15, 20, 30 sometimes, right in that
2 range.

3 Q. And this will sound just as silly as most
4 of my questions, but does Mr. Horn know anything
5 more about all of this than you do? I don't want to
6 have to bother him if he has the same understanding.

7 A. He doesn't. In fact, he knows less.

8 Q. I won't tell him you said that, but okay.
9 Because it seems to me that you obviously do know
10 about it, and I take your word for it that --.

11 I assume, by the way, that if my client
12 is telling the truth and he got a call, you assume
13 there was some breakdown in the VoiceBlaze system,
14 right?

15 A. No. I honestly assume that your customer
16 could have either, A, seen a mailer, which it's very
17 well possible that it hit his location, or, B --
18 I don't know. I mean, I'm all over Google. If you
19 put in "credit card processing Washington," you know,
20 or "credit card processing California," or "credit
21 card processing New Jersey" -- I'm not going to say
22 that. My name is not going to populate on the first
23 page.

24 Q. I'm just saying if my client testifies that
25 he picked up his phone and he got an ADAD from your

1 company, and he's got a Washington phone number, then
2 it's your assumption that something went wrong with
3 VoiceBlaze, correct?

4 A. I'm not going to say that's my assumption.
5 I'm going to say that it could have happened that
6 somebody called him or transferred him to us or --
7 that wasn't an ADAD call.

8 Q. I'm saying --

9 A. It could have very well happened that way.

10 Q. Right, but what if it was an ADAD? I'm just
11 asking you to assume. Because I'm assuming your --
12 because it sounds to me what you're saying is that you
13 knew it was set up that it wouldn't go to Washington,
14 and if something went into Washington, it wasn't your
15 fault, it was something wrong with VoiceBlaze. I
16 mean, that's what you're saying, right?

17 MR. PEABODY: Object to the form of the
18 question.

19 Q. Let's start over so it's not objectionable.

20 Do you have any explanation why
21 Mr. Gardner, who is the person that owns this company
22 that is the plaintiff, would have received an ADAD
23 call from your company, other than a breakdown of the
24 VoiceBlaze system?

25 MR. PEABODY: So you are asking him to

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1 assume that there was an ADAD call received at his
2 company, correct?

3 MR. WILLIAMSON: Yes.

4 MR. PEABODY: For the purpose of this
5 question.

6 MR. WILLIAMSON: Yes.

7 A. I'm -- okay. So we're assuming that a call
8 was made to your client, correct?

9 Q. Right, and it was an ADAD, a prerecorded
10 call, it said whatever your script said, it gave him
11 some options, and so forth.

12 A. Okay. And now you're asking me is
13 it possible that it was a glitch in the VoiceBlaze
14 system --

15 Q. No.

16 A. -- that did this?

17 Q. Let me ask it differently.

18 How do you account for how that call got
19 through, that hypothetical call, given --

20 A. I can't.

21 Q. All right. Good. That's all I have. I want
22 to thank you for putting up with me. I appreciate
23 that.

24 MR. WILLIAMSON: And Max, I guess you can
25 ask questions if you want.

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1 MR. PEABODY: No, I have no questions.

2 MR. WILLIAMSON: Okay.

3 MR. PEABODY: And am I correct you don't
4 need to take Mr. Horn's deposition?

5 MR. WILLIAMSON: I don't think so, no.
6 I take Mr. Beta at his word that he knows more than
7 Mr. Horn.

8 MR. PEABODY: It's Mr. Betta. Betta, not
9 Beta.

10 MR. WILLIAMSON: Betta. I apologize.

11 MR. PEABODY: All right. Well, I guess
12 we're done.

13 MR. WILLIAMSON: Good. Thank you.

14 THE WITNESS: Thank you.

15 MR. PEABODY: Thank you.

16 (Deposition adjourned at
17 2:10 p.m.)

18 (Signature reserved.)

19 -o0o-

20

21

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23

24

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SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof.

Signed in, Washington,
on the day of, 2010.

.....
CHARLES BETTA

TAKEN: November 17, 2010

MARY A. WHITNEY, CCR - WCRL #2728

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1 CERTIFICATE

2
3 STATE OF WASHINGTON)
4) ss.
5 COUNTY OF KING)

6 I, the undersigned Washington Certified Court
7 Reporter, hereby certify that the foregoing deposition
8 upon oral examination of CHARLES BETTA was taken
9 stenographically before me on November 17, 2010, and
10 thereafter transcribed under my direction;

11 That the witness, before examination, was
12 first duly sworn by me pursuant to RCW 5.28.010 to
13 testify truthfully; that the transcript of the
14 deposition is a full, true, and correct transcript to
15 the best of my ability; and that I am neither attorney
16 for, nor relative or employee of any of the parties to
17 the action, or any attorney or counsel employed by the
18 parties hereto, nor financially interested in its
19 outcome.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 29th day of November, 2010.

22
23 /S/ Mary A. Whitney, CCR
24

25 MARY A. WHITNEY, CCR - WCRL #2728

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1
2 DATE: November 29, 2010
3

4 MAX N. PEABODY, ESQ.
5 Gibson Peabody
6 1601 Fifth Avenue
7 Suite 2410
8 Seattle, WA 98101

9 NOTICE OF READINESS FOR SIGNATURE

10 Case Name: RINKY DINK, et al. vs. CAS
11 Venue: SUP/WA/KING
12 Cause No.: 10-2-21906-4 SEA
13 Witness: CHARLES BETTA
14 Taken: NOVEMBER 17, 2010

15 Enclosed is your copy of the transcript of
16 CHARLES BETTA

17 Please arrange for the witness to review the
18 deposition transcript, record any changes on
19 the Change Sheet, and sign, (1), the Change
20 Sheet and, (2), the Original Signature Page.

21 Please return the Change Sheet and the
22 Original Signature Page to this office within
23 30 days so they may be filed with the original
24 transcript.

25
26
27 MARY A. WHITNEY, CCR

28 cc: Roblin J. Williamson, Esq.
29 File
30 Enclosure - (Envelope)

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1
2 DATE FILED: November 29, 2010
3

4 ROBLIN J. WILLIAMSON, ESQ.
Williams & Williamson
5 187 Parfitt Way
Suite 250
6 Bainbridge Island, WA 98110
7

8 NOTICE RE FILING OF ORIGINAL DEPOSITION
9

10 Case Name: RINKY DINK, et al. vs. CAS
Venue: SUP/WA/KING
11 Cause No.: 10-2-21906-4 SEA
Witness: CHARLES BETTA
12 Taken: NOVEMBER 17, 2010
13

14 Enclosed is the original sealed transcript of
CHARLES BETTA
15

16 The original signature page and changes, if
any, received by this office will be
17 forwarded to all counsel.
18
19

20
MARY A. WHITNEY, CCR
21
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24 cc: Max N. Peabody, Esq.
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CHARLES BETTA

TAKEN: November 17, 2010

Re: RINKY DINK, et al. vs. CAS
SUP/WA/KING - No. 10-2-21906-4 SEA
MARY A. WHITNEY, CCR - WCRL #2728

SEATTLE DEPOSITION REPORTERS, LLC

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Charles Betta

November 17, 2010

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RINKY DINK, INC., d/b/a PET)
STOP, a Washington corp.,)
on behalf of itself and all)
Others similarly situated,) No. 10-2-21906-4 SEA
Plaintiffs,)
vs.)
CAPITAL ADVANCE SOLUTIONS,)
LLC,)
Defendant.)

Original Signature Page and Change Sheet to the
Deposition Upon Oral Examination of
CHARLES BETTA

November 17, 2010

187 Parfitt Way

Bainbridge Island, Washington

REPORTED BY: MARY A. WHITNEY, CCR - WCRL #2728

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Date filed:

ROBLIN J. WILLIAMSON, ESQ.
Williams & Williamson
187 Parfitt Way
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Bainbridge Island, WA 98110

NOTICE RE CHANGES TO ORIGINAL DEPOSITION

Case Name: RINKY DINK, et al. vs. CAS
Venue: SUP/WA/KING
Cause No.: 10-2-21906-4 SEA
Witness: CHARLES BETTA
Taken: NOVEMBER 17, 2010

Enclosed is a copy of the Signature Page and
Change Sheet, if any, to the above-referenced
original deposition transcript.

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MARY A. WHITNEY, CCR

cc: Max N. Peabody, Esq.
File

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